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THE

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THE RESPONSIBILITIES AND DUTIES OF EXPRESS CARRIERS.

1. This article contains an epitome of the law in regard to express carriers.
2. Carriers by express responsible as common carriers.
3. And, in addition, the owners of goods have the responsibility of the carriers employed by such express company.
4. The same rule established in an early American case. Statement of facts.
5. Statement of the points decided. Responsibility of general carriers.
6. Contracts exonerating carrier for neglect against sound policy. Course of decisions, in America, upon analogous questions.
7. Finally settled, that carriers may contract for exemption from that extraordinary responsibility imposed by common law.
8. It was next attempted to allow them to contract for exemption from all responsibility. English statute. American rule much the same.
9. It is upon this ground that carriers are held responsible for parcels carried by their servants, in the due course of their business.
10. The distinctive character of express carriers is, that they make personal delivery to the consignees upon their route.
11. Stipulations in the bills of lading executed by express companies, how far binding upon the owners of goods.
12. There should be the clearest evidence of free assent, or the conditions excusing the carrier from responsibility should not be held binding.
13. How far the consignor, or his agent, may stipulate for the transportation.
14. By the construction of the English statute against carriers making discrimination among their customers, it is held they cannot receive parcels of express companies and close their offices against others.
15. Illustration, from an English case, as to what degree of evidence will charge the owner of goods with knowledge of conditions inserted in the bill of lading.
16. The English rule as to responsibility of different carriers constituting a continuous line. The first carrier alone responsible to the owner.
17. The American rule allows the owner to sue any of the companies in fault.
18. Where there is no contract and no business connection extending to the entire route, the first carrier is only responsible for his own line.

19. Express carriers held responsible for safe transportation over their own line, and safe delivery to next carrier.

20. Analysis of more recent decisions and new questions affecting express carriers.

(1). Dangerous character of goods must be communicated to carrier.

(2). Held, in New Jersey, that carrier cannot stipulate for exemption from responsibility, for his own negligence.

(3). The first carrier, as to the transportation beyond his own route, is responsible only as a forwarder, for ordinary care and diligence. Lien.

(4). General duty of carriers. English statute. Duty as to delivery.

(5). Express companies should deliver at place of business of consignee, within business hours, and as soon as possible after arrival.

(6). If they undertake, for hire, the collection of bills and notes, they are responsible for all defaults in the course pursued, caused by their own neglect or mistake.

(7). Railways, in drawing cars over their road, responsible as carriers.

(8). The form of action, and the extent of the recovery.

(9). The damages recoverable of the carrier for loss or injury of the goods is limited to that affecting the goods; expected profits not included.

(10). The carrier is entitled to a receipt for goods, as delivered in good condition, and the owner, to time and opportunity to examine.

1. In attempting to give an outline of the responsibilities and duties of what are known familiarly, in this country, as express carriers, but more commonly called, in England, carriers of packed parcels, we shall be able to do little more than to epitomize what we have said in our book upon Railways, with the addition of such cases as have been decided since the last edition of that work was published.

2. There was, for a time, some question made in the courts how far these express carriers were to be subjected to the responsibilities of common carriers of goods and merchandise. But it seems to be now conceded, on all hands, that the express carrier is clearly responsible to those interested in any goods committed to his care for transportation, to the full extent of the responsibility of common carriers of goods. This has been so often declared by different courts of the highest authority, that there seems now no ground to question its entire soundness; and it will scarcely be useful to repeat here the numerous decisions upon the point. The following will show sufficiently the general current of the cases in this country, in all which it is held that express companies are responsible as common carriers: *The Mercantile Mutual Insurance Company v. Chase*, 1 E. D. Smith 115; *Sherman v. Welles*, 28 Barb. 403; *Baldwin v. The American Ex-*

press Company, 23 Illinois Rep. 197; s. c. in error, 26 Illinois 504; *Lowell Wire-Fence Company v. Sargent*, 8 Allen 189.

3. In England, and upon the continent of Europe, so far as we know, the railway companies act, to a considerable extent, as the carriers of parcels of all sizes and kinds, although, as before stated, they also carry packed parcels, addressed to different consignees, and in the charge of some general, or special, agent acting on behalf of the consignees. In all such cases, whether such packed parcels are in charge of a general express agent, who makes that his constant employment, between certain points, and who would thereby himself incur also the responsibilities of a common carrier, or of a special agent of the consignees, acting upon a single occasion, and who would thereby himself incur only the responsibility of an ordinary agent, in both cases, the owners have a right to resort to the responsibility of the company conveying the packages, and to hold them responsible to the full extent of common carriers generally, unless there is some stipulation between the company, and the agents from whom they received the goods, that they shall incur a less degree of responsibility: *Redfield on Railways*, § 126, pl. 6, p. 239; *Baxendale v. Western Railway Company*, 5 C. B. N. S. 336; *Garton v. Bristol & Exeter Railway Company*, 7 Jur. N. S. 1234; *Branly v. South Eastern Railway Company*, 9 Jur. N. S. 329.

4. The same rule was established in this country, as it were, in the very infancy of transportation by express companies, in a case where the property was of considerable value (\$18,000), and where the subject was considered and discussed, in all its bearings, by the Supreme Court of the United States: *New Jersey Steam Navigation Company v. Merchants' Bank*, 6 How. 344. The leading opinion of the court was here delivered by Mr. Justice NELSON, and concurred in by Chief Justice TANEY and Justices McLEAN and WAYNE. Some of the other judges concurred in the result, but upon other grounds, and others dissented, but chiefly upon the ground of want of jurisdiction in the court, the suit being instituted in admiralty. This case must be considered as the leading American case, in regard to the duties of railways and steamboats, in the transportation of express packages, while in charge of the express agent.

The package, in question in this case, had been intrusted by the plaintiffs below to William F. Harnden, a resident of Boston,

and the originator, probably, of this mode of transportation upon railways and steamboats, who was, at the time, engaged in carrying "small packages of goods, specie, and bundles of all kinds, daily, for any persons choosing to employ him, to and from the cities of Boston and New York, using the public conveyances between those cities as the mode of transportation." He had entered into an agreement with the plaintiffs in error, the defendants below, by which, for \$250 per month, he was allowed to transport, upon their steamers, his crate of parcels, "contents unknown;" the crate and its contents to be at all times at Harnden's risk, and the company "not, in any event, to be responsible, either to him or his employers, for the loss of any goods or other things transported under the contract." Public notice was required to be given by Harnden to this effect, and he was also required to insert this condition, exempting the steamboat company from responsibility, in the receipt which he gave for goods transported by him, upon their boats. This condition was in the following terms: "Take notice. William F. Harnden is alone responsible for the loss or injury of any articles or property committed to his care; nor is any risk assumed by, nor can any be attached to, the proprietors of the steamboats in which his crate may be and is transported, in respect to it, or its contents, at any time." The \$18,000 was specie which the plaintiffs had employed Harnden to collect for them in the city of New York.

5. The points decided in this case are thus stated: The general owner of specie who has employed an expressman to transport it for him, may maintain an action against the carriers employed by such expressman, and who are the proprietors of a steamboat upon which the same is transported, for its loss, through the fault of such proprietors, or their agents. But in such cases, the rights of the general owner are controlled by a valid contract between the expressman and the carriers employed by him. A stipulation, however, in such contract that the carriers are not to be responsible in any event for loss or damage, cannot be construed to exonerate them for losses caused by their own want of ordinary care. We are not aware that these propositions have been seriously questioned, or essentially qualified in the subsequent cases.

6. How far an express stipulation, on the part of the owner of goods committed to carriers for transportation, that the carrier shall be exonerated from all responsibility, even for the gross

neglect of himself and his servants, can be regarded as a binding contract, and consistent with sound policy, is a question of too great extension and importance to be discussed here, as incidental to our main purpose. It is safe to assume, as the courts universally do, that no such result will be allowed to come about by anything less than the use of the most unequivocal language to that effect. All intendments and constructive inferences will be carried in the opposite direction. And when it becomes impossible to understand the contract between the carrier and the owner of the goods, in any other sense except that of exonerating the former for gross neglect, or even ordinary neglect, we trust the courts will maintain sufficient self-respect to declare the contract void: *Redfield on Railways*, § 134, pp. 281, 282. It seems to involve a very curious anomaly, in the history of the progress of jurisprudence, that when a point, strenuously contested, for years, is once finally conceded, it will generally give rise to serious efforts to carry the matter, quite into the extreme of the *reductio ad absurdum*, in the opposite direction. This is very well illustrated, upon the point we are now considering, by briefly advertng to the course of the decisions upon the question, whether it was competent for common carriers, by express contract or general notice, to exonerate themselves from that extraordinary responsibility imposed upon them by the common law, whereby they are made insurers for the safe delivery of all goods committed to their custody. It was for a long period seriously and strenuously urged, by the courts, and by some text-writers perhaps, that such relaxation was wholly inadmissible. That was so held in *Gould v. Hill*, 2 Hill 623; *Hollister v. Nowlen*, 19 Wend. 234; *Cole v. Goodwin*, Id. 251; and these cases are quoted, with approbation, by Mr. Justice NELSON, in *N. J. Steam Nav. Co. v. Merchants' Bank*, *supra*.

7. But it was finally found, upon more careful scrutiny, that there was no objection, in principle, to allowing the parties to contract, if done freely and upon reasonable conditions of equality, for any degree of relaxation of the extraordinary degree of vigilance and responsibility imposed upon carriers by the common law, provided the relaxation were not carried into the domain of negligence and inattention to duty. See *Farmers' and Mechanics' Bank v. Champlain Transportation Company*, 23 Vt. Rep. 186, 205, 206, where we have discussed the point more in detail.

8. After this point was universally yielded, if we except the state of New York, and some few others following their lead, it was next attempted to carry the right of exemption from responsibility, on the part of common carriers, by means of special contracts, still further, and virtually to allow them to make their own terms, both as to price and the degree of responsibility assumed in regard to the risk of transportation. The English statute, entitled *The Railway and Canal Traffic Act, 1854, 17 & 18 Vict. c. 31, s. 7*, was passed in consequence, and has placed the subject upon more reasonable and practicable grounds, in that country. This act allows the carrier to make any condition in regard to the terms of transportation, such as giving notice of the contents of packages, and paying insurance in advance; in short, upon any point, and to any extent, which the court before whom any action may be brought shall adjudge to be just and reasonable, provided that such conditions shall not be binding unless incorporated into a special contract signed by the person owning or delivering the goods. The English statute also provides, that no stipulation exonerating the carrier from responsibility for losses or injuries, caused by the neglect or want of ordinary care of the carrier or his servants, shall be binding upon the owner of the goods. As to the reasonableness of the conditions to be imposed by carriers, the American courts had anticipated the English statute: *Farmers' and Mechanics' Bank v. Champlain Transportation Co.*, 23 Vt. 186.

9. The rule established by the case of *N. J. Steam Navigation Co. v. Merchants' Bank*, *supra*, in regard to the responsibility of the company to the owner, for the safe transportation and delivery of parcels intrusted to expressmen employing such company, is not very different from that which had before existed, in regard to parcels carried upon stages and steamboats, by the drivers and captains, in some instances without the actual knowledge and consent perhaps, of the owners of such agencies of transportation; and in other cases, when such agents or servants were allowed to carry such parcels, without accounting for the compensation, that being treated as a mere perquisite of office. In all such cases the owners of the conveyances always have been held responsible, as common carriers, for the transportation of such parcels: *Farmers' and Mechanics' Bank v. Champlain Transportation Co.*, 23 Vt. Rep. 186, 203, 204, and cases cited. Before the establishment of express companies this was the usual, and

only public mode, of transporting small parcels: *Magall v. Boston and Maine Railroad Company*, 19 N. H. Rep. 122.

10. In turning our attention more specifically to the responsibility of express carriers, the first consideration distinctive of this mode of transportation is, that they are bound to deliver parcels to the persons to whom they are addressed. This was the general rule as to carriers by land, until since the introduction of railways: *Hyde v. Trent and Mersey Nav. Company*, 5 T. R. 389; *Stephenson v. Hart*, 4 Bing. 476; *Farmers' and Mechanics' Bank v. Champlain Transp. Co.*, 23 Vt. Rep. 186. Since the introduction of railways carriers in that mode have been exempted from personal delivery of their parcels, and allowed to deposit them in warehouse, and thus exonerate themselves from the longer continuance of the responsibility of carriers: *Thomas v. The Boston and Prov. Railroad Company*, 10 Met. 472. But the great necessity for having express carriers arose from this defect in delivery of goods by the ordinary railway transportation; and the same defect also existed in regard to the delivery of goods transported by steamboats. They could only deliver at the wharves, and were not expected to employ special messengers and porters to deliver their goods: *Chickering v. Fowler*, 4 Pick. 371. And it is to remedy this inconvenience, and restore the carrying business by land to its former state, in some degree, that express companies have come in use, with the distinctive character of making personal delivery of their parcels to the consignees: Redfield on Railways, § 127. This has been so often decided that it is scarcely required that any considerable number of cases should be cited. This question is considerably examined, and the views just stated fully confirmed, in the case of *Baldwin v. The American Express Co.*, 23 Illinois 197; s. c. affirmed, 26 Id. 504.

11. Perhaps the most important practical question, in regard to the responsibility of express carriers, arises upon stipulations made with them, or claimed to be made with them, in regard to the extent of their responsibility for the transportation. It has become very common with such companies to insert in the bills of lading or receipts, which they deliver to those who leave parcels with them for transportation, such conditions as exonerate them from all extraordinary responsibility. We have no occasion to discuss the propriety or good policy of such practices. It seems to be regarded as competent, and binding upon the owners of the

goods, if understandingly assented to by them. And this will generally be presumed where it is not, in some way, written or printed in such manner, purposely, as not to attract observation. If that appear to have been the design of the carrier, it is surely proper that he should derive no benefit from the condition. Any such evasion or subterfuge, which is obviously intended to mislead the owner of the goods, by leaving the impression that he has secured the unqualified responsibility of the carrier, while, at the same time, the carrier has secured a formal, but covert stipulation on his part, for exemption from that responsibility, should certainly be discountenanced.

12. And it has always seemed to us the courts will find it convenient, if not indispensable, to restrain these express companies, to some extent, in regard to the limitations which they impose upon their customers. It should certainly appear that no deception is practised, but that the owner of the goods fully understood the conditions upon which the carrier claimed to deliver the goods, or else that he might have done so but for his want of ordinary care ; and especially will this be requisite to be watchfully enforced, whenever the conditions found in the receipt are of an unusual and extraordinary character, and such as it is presumable that the owner of the goods would not readily have submitted to, without the stress of some extraordinary pressure. In short, unless it appear that the conditions exonerating the responsibility of the carrier are reasonable, and such as it may fairly be supposed the owner of the goods would readily have assented to, nothing but the clearest, most satisfactory evidence that he did assent to them, should be received. And in all cases, any condition exonerating the carrier from his ordinary common law responsibility should be clearly and plainly expressed in the contract, and in a form readily to attract the attention of the consignor of the goods.

13. And it may well be made a question, how far the consignor of goods, by express, and especially the porter, or hackman, or city express, delivering parcels to the express carrier, have authority to bind the owner of the goods. The English statute makes the special contract of the owner or person delivering the goods sufficient in all cases. And any other rule would be liable to great inconvenience in practice, since the express carrier may make his own conditions for accepting goods, at the peril of an action, if the condition is not acceded to, and proves to be unreasonable, upon

the trial of the action for not carrying. In other words, express carriers, in common with all other carriers, are bound to accept and carry all goods offered, within the range of the business they hold themselves out to do, if the charges are also tendered ; and they cannot exonerate themselves from this obligation at common law, by insisting upon annexing any condition relieving their ordinary responsibility : *Garton v. Bristol and Exeter Railway Company*, 1 El. B. & S. 112 ; s. c. 7 Jur. N. S. 1234. But if they do annex any such condition, at common law, or what is called under the English statute, an unreasonable condition, and the same is not acceded to, they remain liable to such damages as the party has sustained, by reason of their refusal to carry the goods, or what is the same thing, to carry them except upon conditions, which they had no right to claim. But if, instead of refusing to accede to the conditions claimed by the carrier, and pursuing his remedy by action, the owner of the goods finds it more convenient to yield to the demands of the carrier, which he might have resisted, and stipulates with the carrier, fully and understandingly, for a reduced degree of responsibility, as a choice of evils, we see no good reason why he should not be bound by his contract, although to some extent compelled to adopt it, as the lesser of two evils, both of which he could not escape. And in general it is fair to conclude that the consignor of the goods, or any agent to whom he sees fit to intrust the delivery of the goods, will and must have authority to bind the owner, in his absence, since some one must act on his behalf in giving instructions, and making conditions affecting the transportation ; and in the absence of the owner, and of any known general agent of such owner, it seems almost a necessity to give the person delivering the goods, or having charge of the delivery, not the mere porter or servant, but the agent under whom such servant acts, power to bind the owner. The recent English case of *Bartlett v. London and North-Western Railway Co.*, 7 H. & N. 400, s. c. 8 Jur. N. S. 58, seems to assume the same general view. It was there held that the consignors had the right, in the first instance, to make a binding contract with the carrier, as to the mode of delivery ; but that the carrier would be excused if he modified the performance of the same, according to the directions of the consignee, thus giving the consignor, whether owner or not, the right to make a binding contract on the part of every one interested in the transportation in the first

instance, as to every matter pertaining to it, but at the same time, from like considerations of convenience and necessity, allowing the consignee to modify such contract as to those matters apparently affecting his agency, whether he were in fact the owner or not.

14. It was decided in the case of *Garton v. Bristol and Exeter Railway Company*, *supra*, that a railway company had no right to close their office and refuse to receive parcels packed in the same way express agents were accustomed to pack them, while they were still receiving such parcels from such agents.

15. In a late English case, *Lewis v. Great Western Railway Company*, 5 H. & N. 867, upon the point of the agent making the delivery of goods, being bound by the conditions inserted in the memorandum made and signed at the time, when under the head "Conditions" was written: "No claim for deficiency, damage, or detention will be allowed, unless made within three days after the delivery of the goods; nor for loss, unless made within seven days of the time they should have been delivered;" and the plaintiff testified "he was told to sign the paper and did so; he might have seen the word 'Conditions' but did not read them, and was not told what they were;" and one of the packages was not delivered, and was not called for within seven days of the time it should have been delivered: it was held, there was nothing to rebut the presumption arising from the signature of the paper by the plaintiff, that he understood that the contract was subject to the conditions; and they were considered just and reasonable within the English statute.

16. It becomes a very important practical question, To what extent the first express carrier, upon a long line of transportation, is responsible. We see no reason why the responsibility of this class of carriers should not be the same, as to long lines of transportation, as that of other carriers. The profession all agree that there is a distinction in this respect between the rule of responsibility imposed upon carriers in America, on long lines of transportation, and that imposed in England. In the latter country, by a long and uniform course of decision, based upon the leading case of *Muschamp v. Lancaster and Preston Railway Company*, 8 M. & W. 421, it is clearly established that the carrier, by accepting a package of goods, marked for any distant point, assumes the responsibility of its safe arrival and timely delivery at its

ultimate destination. This rule has been carried so far in England that it has been recently held in the House of Lords, *Bristol and Exeter Railway Company v. Collins*, 7 House of Lords Cas. 194, s. c. 5 Jur. N. S. 1367, that the contract in such cases is so exclusively with the first company, that the owner of the goods can maintain no action against any of the subsequent companies upon the line, even by showing that the loss or injury occurred through their default. And the same rule is there applied to the baggage of passengers ticketed over an extended line of travel, consisting of different companies; the first company is alone responsible to the owner, there being no priority between him and the others: *Mytton v. Midland Railway Company*, 4 H. & N. 615.

17. But the rule of responsibility in all these cases is very different in the American courts. We do not consider that there is any such want of privity as to the subsequent companies, that the owner of the goods or baggage may not maintain an action against any of the subsequent carriers upon the line, by showing that the loss occurred there. It has been decided that the first company, where there is a business connection through the route, is liable for the whole route: *Cury v. Cleveland and Toledo Railway Company*, 28 Barb. 35. And it has also been held, where the different companies constitute a continuous line, and run their cars over the whole route without change, selling through tickets and checking baggage through, that an action for loss of baggage, anywhere upon the route, will lie against either company: *Hart v. Rensselaer and Sar. Railway Company*, 4 Selden 37.

18. We have already intimated that, in this country, the first company upon a continuous line of transportation, where there is no business connection between the different companies constituting the route, assumes no responsibility beyond its own line, except for safe delivery to the next carrier upon the route: Redfield on Railways, § 135, pl. 2, and numerous cases cited in note 6. The first carrier may, by special contract with the owner, assume the entire responsibility of the safe delivery at the ultimate destination: *Id.* n. 7, and cases cited. And where there is a business connection between the different companies, extending through the entire route, the first company will be regarded as having assumed the responsibility of the entire route, unless there is something in the contract or the circumstances indicating a differ-

ent purpose : Redfield on Railways, § 135, and cases cited, pl. 4, n. 8, 9.

19. The same rules of construction and of responsibility, so far as we know, have in this country been applied to express companies. They have generally been held responsible for safe transportation to the end of their lines, and careful delivery to the next company on the route, with proper directions to each successive carrier ; and it was also considered that the successive carriers were only responsible for transportation across their own line, and for safe delivery to the next carrier, according to the usual and most direct line of communication with the ultimate point of destination. Thus where an express company at Detroit received a package addressed to New York city, which came into the hands of the defendants at Suspension Bridge, who carried it to Albany, and there delivered it to the Hudson River Railway, common carriers between that city and New York, giving proper instructions to that company, it was held that the defendants were thereby exonerated from further responsibility : *Hempstead v. New York Central Railway Company*, 28 Barb. 485. Where special instructions, in regard to the mode of delivery, are given by the consignor, they must be followed, unless, as we have seen, they are modified by the consignee, and in either case the carrier must follow the latest instructions : *Michigan v. N. & S. Indiana Railway Company*, 20 Illinois Rep. 375. In the English courts it makes no difference as to inferring a contract with the first carrier for the entire route, that it consists partly of steamboat transportation and partly by land where there is no railway ; in all cases a presumptive responsibility for the entire route attaches to the first carrier : *Wilby v. The West Cornwall Railway Company*, 2 H. & N. 702.

20. We might extend this article to an almost indefinite length, but we must now content ourselves with a brief allusion to some few questions of special interest connected with this mode of transportation, and an imperfect analysis of the more recent decisions bearing upon these questions.

(1). One who employs a carrier to carry an article of such a dangerous character as to require extraordinary care in its conveyance, must communicate the fact to the carrier, or he cannot hold him responsible for any injury to such article, which is, to any extent or in any manner, the result of his omission to make

such communication, either to the carrier or his servants : *Farrant v. Baines*, 16 C. B. N. S. 553 ; 8 Jur. N. S. 863.

(2.) In the somewhat recent case of *Ashmore v. The Pennsylvania, &c., Railway Company*, 4 Dutcher 180, the Supreme Court of New Jersey decided that, although it was entirely competent for a carrier to stipulate for exemption from his extreme common law responsibility, he could not by such contract discharge himself from responsibility for the consequences of his own fault or negligence, or that of his servants. And it seems always to have been held in Ohio, that common carriers cannot relieve themselves of their first and legal responsibility by their own acts, or by general notice brought home to the knowledge of the owner of the goods, and not objected to by him : *Davidson v. Graham*, 2 Ohio State Rep. 131 ; *Graham & Co. v. Davis & Co.*, 4 Id. 762. See also SCOTT, J., in *Welsh v. The Pittsburgh, Fort Wayne, and Chicago Railroad Company*, 10 Ohio 70, citing *Jones v. Voorhies*, 10 Ohio R. 145. And it was held in a very recent case in Massachusetts, *Judson v. The Western Railroad Company*, 9 Allen, that a common carrier cannot by general notice exonerate himself from his legal responsibility, or fix a limit beyond which he shall not be held liable.

(3.) As before intimated, the first carrier upon an extended route of transportation, to whom goods are delivered, addressed to some remote point upon the route, acts as a mere forwarding agent, as to those connected with the transportation beyond the terminus of his own route, and, as such, is only bound to the extent of ordinary care and common diligence : *Northern Railroad Co. v. Fitchburgh Railroad Co.*, 6 Allen 254. And if an injury occurs, or any loss ensues, by reason of the first carrier, to whom the owner's instructions were communicated, not fully, or understandingly, carrying them through the route, as he should have done, as if the goods are in consequence sent to the wrong place, this will not exonerate the owner from responsibility for the charges of transportation by the subsequent carriers, or affect the validity of their lien for such charges, as they have themselves earned or advanced to the other companies from the point of original departure : *Briggs v. Boston and Lowell Railroad Co.*, 6 Allen 246. But common carriers can acquire no lien upon goods transported for the national government, so as to justify their detention : *Dufolt v. Gorman*, 1 Min. 301.

(4). The general duty of carriers of goods is defined in a late English case, *Hales v. London and North Western Railway Co.*, 4 B. & S. 66, to be, to carry according to the usual route professed by them to the public, and to deliver within a reasonable time. And in another late English case, *Peck v. North Staffordshire Railway Company*, 9 Jur. N. S. 914, it is held, that all the parts of the statute regulating the traffic, must be taken together, and that the conditions affecting the responsibility of carriers must be, in the opinion of the court, both just and reasonable, and be also embodied in a special contract in writing, signed by the owner or sender of the goods: *S. P. Aldridge v. Great Western Railway Co.*, 15 C. B. N. S. 582. And some of the American courts seem to insist, that safe delivery to the consignee is *primâ facie* the duty of all carriers; and with the necessary exceptions, that it be upon their professed route, and consistent with their mode of doing their business, we see no ground to question the binding obligations of that rule: *Bartlett v. Steamboat Philadelphia*, 32 Missouri Rep. 256.

(5). And, in regard to express companies, who are generally supposed to undertake for personal delivery to the consignee of all packages within the range of their own particular route, it has been lately decided, that such company should deliver, at the place of business of the consignee, as early as practicable after arrival, and within the usual business hours: *Marshall v. The American Express Co.*, 7 Wis. Rep. 1.

(6). Express companies have, to a considerable extent, acted as collectors of bills of exchange and notes, in some portions of the country. And it becomes a very serious question, for them, as well as the public, how far such business is likely to involve them in responsibility, it being something quite beyond and aside of the ordinary carrying business. In a late case in Indiana, it was held, that where such company receives for collection, for compensation, a bill of exchange, drawn in one state and payable in another, and delivers the same to a notary, for demand and protest, on the day before it should regularly be made, and in consequence the notary makes such demand one day before the maturity of the bill, whereby the drawer and indorsers are released, the acceptor being insolvent, the company will be liable to the holder for the sum due upon the bill: *American Express Co. v. Haine*, 21 Indiana Rep. 4.

(7). It seems, that it will not relieve a railway company from its responsibility as a common carrier, because the owner of the goods furnishes his own car, in which property is transported, and assumes the loading and unloading, and furnishes a brakesman to accompany the car: *Mallory v. Tioga Railroad Co.*, 39 Barb. Rep. 488.

(8). As to the form of action against common carriers, it seems to have been settled, from an early day, that a delivery to a wrong person will amount to a conversion: *Duff v. Budd*, 3 B. & Bing. 177; *Sanquer v. London and South Western Railroad Co.*, 32 Eng. L. & Eq. 338; *Claflin v. Boston and Lowell Railroad Co.*, 7 Allen 341. And the carrier may maintain an action in his own name, for injury done to property intrusted to him, and may even recover the value of the property, which he will hold in trust for the owner: *Merrick v. Brainard*, 38 Barb. 574. But in an action for non-delivery of the goods, the owner cannot recover for an injury to the goods: *Nudd v. Wells & Co.*, 11 Wis. Rep. 407.

(9). The courts have had considerable controversy in regard to questions affecting the amount of damages recoverable of common carriers. The English courts adhere strenuously to their former views, that all speculative damages are to be excluded: Redfield on Railways, § 148, p. 320. Thus, where the plaintiff had ordered goods, by express, for the purpose of manufacturing them into articles for sale, from which he expected to derive considerable profit, and the articles were not delivered until the season for the business had passed, the plaintiff was held entitled to recover the difference in the market value of the articles between the time of expected and actual delivery, but nothing for the loss of profits: *Wilson v. Lancashire and Yorkshire Railway Co.*, 9 C. B. N. S. 632, 7 Jur. N. S. 862. The same rule is declared in *Simmons v. South Eastern Railway Co.*, 7 Jur. N. S. 489. And where the goods are not delivered at all, the rule of damages is the value at the time and place of delivery, and interest from that time: *Spring vs. Haskell*, 4 Allen 112. A common carrier may limit the extent of his responsibility by express contract, but it is said in New York, not by mere notice: *Nevins vs. Bay State, &c., Co.*, 4 Bosw. 225.

(10). It has been decided that the carrier may require of the consignee a receipt, showing the delivery of the goods in good condition, and that the owner has a corresponding right to examine

the goods before giving the receipt, to determine their condition : *Skinner v. Chicago and Rock Island Railroad Co.*, 12 Iowa Rep. 191. This seems to be the only just rule in regard to the subject. But we apprehend the practice has been different, to some extent: express companies, requiring the name of the consignee upon their delivery books, which amounts to a receipt for delivery, which presumptively means in good condition; but, at the same time, refusing time or opportunity for examination. We are sure this practice prevails to some extent, but we believe, without any just foundation.

There are many other points we would be glad to examine, but we have no space. Our readers will find a valuable case, upon this subject, in another place in this number. I. F. R.

RECENT AMERICAN DECISIONS.

Supreme Court of California.

GEORGE F. HOOPER v. WELLS, FARGO & CO.

The liabilities of common carriers and forwarders, independent of any express stipulation in the contract, are entirely different.

The common carrier who undertakes to carry goods for hire is an insurer of the property intrusted to him, and is legally responsible for acts against which he cannot provide, from whatever cause arising; the acts of God and the public enemy alone excepted.

Forwarders are not insurers, but they are responsible for all injuries to property, while in their charge, resulting from negligence or misfeasance of themselves, their agents or employees.

Restrictions upon the common law liability of a common carrier, for his benefit, inserted in a receipt drawn up by himself and signed by him alone, for goods intrusted to him for transportation, are to be construed most strongly against the common carrier.

If a common carrier, who undertakes to transport goods, for hire, from one place to another, "and deliver to address," inserts a clause in a receipt signed by him alone, and given to the person intrusting him with the goods, stating that the carrier is "not to be responsible except as forwarder," this restrictive clause does not exempt the carrier from liability for loss of the goods, occasioned by the carelessness or negligence of the employees on a steamboat owned and controlled by other parties than the carrier, but ordinarily used by him, in his business of carrier, as a means of conveyance. The managers and employees of the steamboat are, in legal contem-